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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1957.

No. 157

VINCENT CIUCCI, SR.,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

PETITION FOR REHEARING OR MODIFICATION OF THIS COURT'S OPINION AND JUDGMENT

Certificate of Service Appended

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Of Counsel.

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Illinois respectfully petitions this Court to grant a rehearing in this cause, to remove the following language from the Court's opinion:

> "Mr. Justice Frankfurter and Mr. Justice Harlan, although believing that the matters set forth in the aforementioned newspaper articles might, if established, require a ruling that fundamental unfairness existed here, concur in the affirmance of the judgment because this material, not being part of the record, and not having been considered by the state courts, may not be considered here"

and to delete from its opinion and judgment of affirmance the language

> "with leave to petitioner to institute such further proceedings as may be available to him for the purpose of substantiating the claim that he was deprived of due process."

SUGGESTIONS IN SUPPORT OF THIS PETITION.

The Court's opinion intimates without declaring that in the view of Mr. Justice Frankfurter and Mr. Justice Harlan, "fundamental unfairness" may have existed in the petitioner's conviction because of "a number of articles which had appeared in Chicago newspapers after the first and second trials attributing to the prosecution certain statements expressing extreme dissatisfaction with the prison sentences fixed by the jury [in petitioner's previous trials for the murder of his wife and one of his daughters] and announcing a determined purpose to prosecute petitioner until a death sentence was obtained."

As the Court's opinion observes, "Neither these articles nor their subject matter is included in the record certified to this Court from the Supreme Court of Illinois," nor were they "considered by the State courts".

In *Brown* v. *Allen*, 344 U. S. 443, this Court said at page 486:

> "Failure to appeal is much like a failure to raise a known and existing question of unconstitutional proceeding or action prior to conviction or commitment. Such failure, of course, bars subsequent objection to conviction on those grounds."

The suggestion of Mr. Justice Frankfurter and Mr. Justice Harlan that "fundamental unfairness" may have "existed" because of the publication of these articles is thus addressed to a matter that if it has constitutional merit was waived. However, Illinois' earnest suggestion that

Mr. Justice Frankfurter's and Mr. Justice Harlan's intimation that "fundamental unfairness" may have existed is not prompted by the fact that it is only a *dictum* of two members of this Court.

All over the United States, prosecuting and other public officials denounce shocking crimes and announce a purpose not only to prosecute but to seek the death penalty or other serious sanctions against those charged with such crimes. If these utterances on the part of public officials are sufficient to vitiate subsequent convictions and ensuing sentences even though the accused made no objection to or at his trial on account of such publications—if, in short, convicted persons such as petitioner may speculate upon a favorable outcome notwithstanding such publications and if such an outcome does not eventuate, void their sentences years after their imposition, a situation grave indeed confronts virtually every court of criminal jurisdiction in the land.

The intimation that such publications may void convictions many years old, no point having been made of the publications prior to conviction, poses a question: What is to happen to the due and orderly administration of justice as justice has been traditionally administered in all of the forty-eight States?

It is impossible to overemphasize the moment of the expression of Mr. Justice Frankfurter and Mr. Justice Harlan in its portent in the field of criminal jurisprudence. Thousands of convictions may fall within the purview of the expression.

We respectfully suggest that no pronouncement of such scope as that of Mr. Justice Frankfurter and Mr. Justice Harlan should find utterance in this Court's opinions *except in a case where the question has been preserved and fully argued.*

Not only was the matter of newspaper publications in the instant case omitted entirely from the record in the State court, the presence of such a question was not indicated by the petition for *certiorari.*

We therefore respectfully ask this Court to delete from its opinion the expression of Mr. Justice Frankfurter and Mr. Justice Harlan and to excise from its judgment the language "with leave to petitioner to institute such further proceedings as may be available to him for the purpose of substantiating the claim that he was deprived of due process."

Respectfully submitted,

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Counsel for Respondent.

WILLIAM C. WINES,
THEODORE G. MAHERAS,
Assistant Attorneys General,
Of Counsel.

Certificate of Service.

I, William C. Wines, one of the attorneys for respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that, on or before June 6, 1958, I served copies of the foregoing petition for rehearing or modification of this Court's opinion and judgment as follows:

By mailing three copies of said petition to

George N. Leighton and
Moore, Ming & Leighton
123 W. Madison St.
3rd Floor
Chicago 2, Illinois

in duly addressed envelope, first class, postage prepaid.

WILLIAM C. WINES,
One of Attorneys for Respondent.

I, William C. Wines, hereby certify that the foregoing petition is presented in good faith and not for delay.

William C. Wines.